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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,633	10/19/2001	James M. Kain	20341-68796	6018

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INDIANAPOLIS, IN 46204

EXAMINER

GARRETT, ERIKA P

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 06022004

Application Number: 10/032,633
Filing Date: October 19, 2001
Appellant(s): KAIN, JAMES M.

Richard Lazarus
For Appellant

EXAMINER'S ANSWER

MAILED
JUL 06 2004
GROUP 3600

This is in response to the appeal brief filed November 18, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-17.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-17 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,248,183

Gignac et al.

9-1993

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gignac (5,248,183). In regards to claims 1-2,6-9,11-14, 17, Gignac discloses the use of a juvenile seat (12) comprising a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides (figure 1) and a seating surface between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall having a cavity (22) facing outwardly away from the seating surface; a cup holder (30) comprising a shell having an inner surface providing a cup retainer (32) and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base; an opened positioned extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall; wherein the base provides first & second posts (90) extending into the cavity. See figures 1-3. In regards to claims

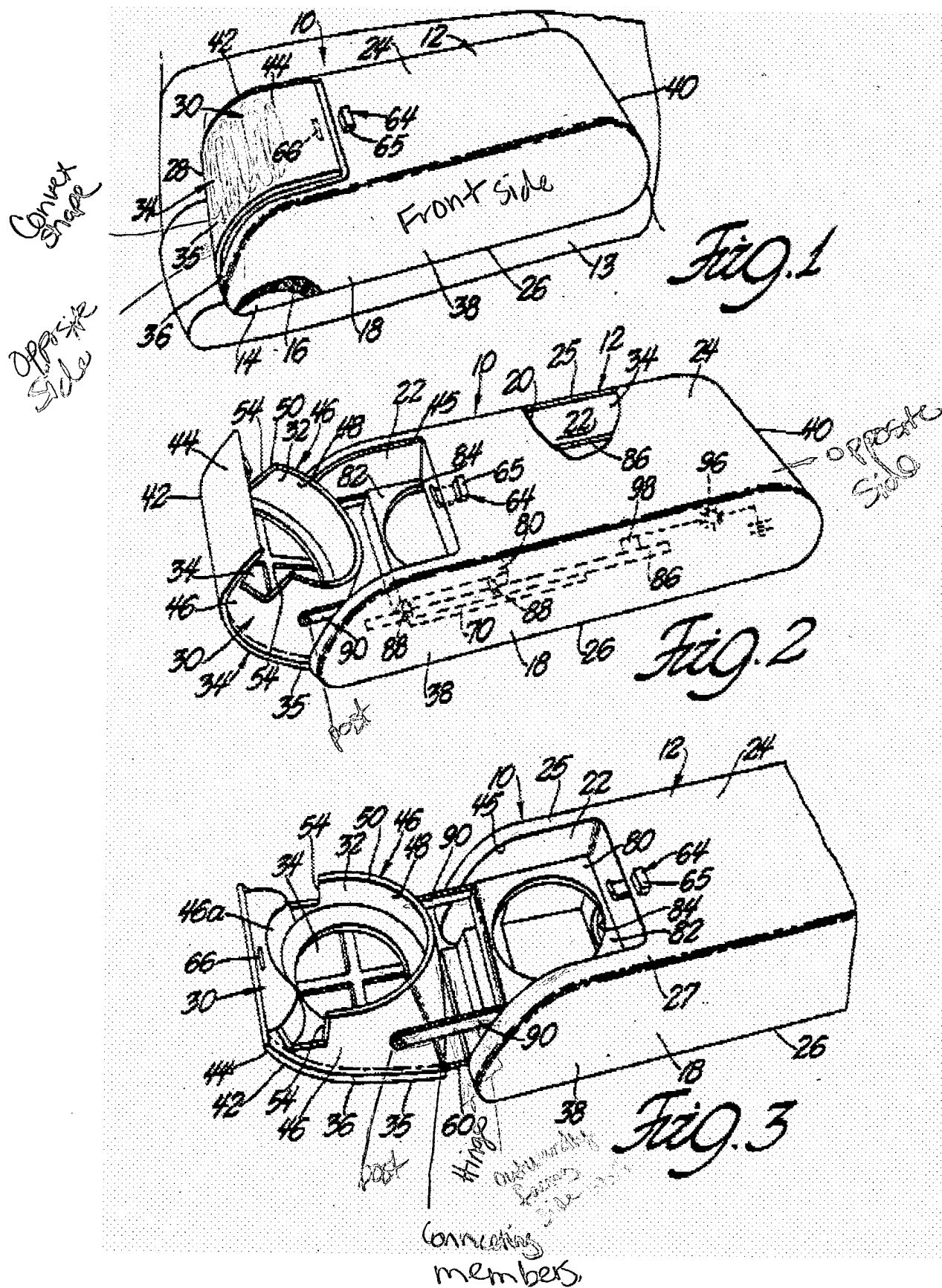
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3,10, the shell includes first and second connectors (located on the ends of 90), each connector being formed to include a post (90) opening to receive one of the posts, the connectors pivoting about the posts when the cup holder is moved between the closed and opened positions. In regards to claim 4, further comprising the outer shell surface has a convex shape (34), the upstanding sidewall has a convex shape, and the outer shell surface cooperated with the sidewall to continue the convex shape of the sidewall to form a smooth convex shape when the cup holder is in the closed position. In regards to claim 5, juvenile seat comprising a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides (figure 1) and a seating surface between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall having a cavity (22) facing outwardly away from the seating surface; a cup holder (34) comprising a shell having an inner surface providing a cup retainer (82) and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base; an opened positioned extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall; wherein at least one of the base or the cup holder includes a detent (88) to engage a recess provided by the cup holder or the base to prevent free movement of the cup holder from the closed position. In regards to claims 15-16, further comprising the shell including a first hinged portion and the side the cup holder is coupled to include a second hinged portion, the coupling between the cup holder and the one of the sides being provided by the hinged

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portions; the shell includes an upper & lower portion and when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position.

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(11) Response to Argument

In response to applicant's argument that *Gignac fails to show or describe a vehicle seat and that there is no teaching or suggestion of a juvenile seat adapted to be placed on the seat of a vehicle*, a recitation of the intended use of the claimed invention must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. **If the prior art structure is capable of performing the intended use, then it meets the claim.** The examiner is of the opinion that the console of Gignac is a base to be adapted to be placed on a vehicle seat. Consequently the examiner maintains the position that the console is capable in fact performing the use of a juvenile seat especially for persons of small stature i.e., infants. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to the appellant's argument that the "*Gignac does not show the use of posts located in the cavity and pair of first and second connectors*", appellant is directed toward the figure above. The examiner is of the opinion that Gignac shows the use of posts located in the cavity and a pair of first & second connectors.

In response to applicant's argument that a *juvenile seat comprising a base including a cavity comprising a cup holder*, a recitation of the intended use of the claimed invention must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. **If the prior art structure is capable of performing the intended use, then it**

meets the claim. The examiner is of the opinion that Gignac is capable of being a juvenile seat having a base including a cavity comprising a cup holder. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to the appellant argument that *Gignac does not show base including an upstanding sidewall having an inwardly facing wall and an outward facing wall*, see figures above. The appellant is directed toward the figure above to the location of the inwardly and outwardly facing sidewall. The examiner is of the opinion that Gignac shows the upstanding sidewall having outwardly and inwardly facing wall. The appellant is also directed toward the claim language, it doesn't say the size of the outwardly facing sidewall.

In response of the appellant argument that *Gignac fails the outwardly facing wall is a convex shape and the outer surface is continuous with the outwardly facing wall when the cup is in the closed position*, the appellant is directed toward figure 1. The word convex means "curved or rounded like exterior", as stated in Webster's dictionary. Therefore, The examiner is of the opinion that the outwardly facing wall is a convex shape and the outer surface is continuous with the outwardly facing wall when the cup is in the closed position.


The examiner has carefully considered the declaration and is of the position that the declaration is reflected of the appellant's opinion, which is unsubstantiated by a showing of evidence to verify the juvenile seat adapted to be place on a vehicle seat.

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Appellant's referral to the declaration by Gignac in that "the console is not a juvenile seat.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600

EG ~~24~~.
June 21, 2004

Conferees
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